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participate in or be actually present at the immediate scene of violence; for successfully to instigate treason is to commit it.¹³ No plea of compulsion will excuse a treasonable act unless it were done under an immediate and well-founded fear of death or grievous bodily harm. Mere apprehension of any loss of property, or of slight or remote injury to the person, is not enough.¹⁴

In legislating on the subject, Congress has provided that "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason,"¹⁵ punishable by death or, at the discretion of the court, by imprisonment for not less than five years, coupled with a fine of not less than ten thousand dollars and incapacity to hold any office under the United States.¹⁶ The words, "owing allegiance to the United States," are here entirely surplusage and do not in the slightest degree affect the sense of the section,¹⁷ for treason is a breach of allegiance and it is well settled that every resident or sojourner within the United States, as well as every citizen, owes to the government a local allegiance, permanent or temporary, sufficient to subject him to the penalties of treason.¹⁸ *Protectio trahit subjectionem et subjectio protectionem.*

In conclusion, it should be noted that Congress has also defined and penalized misprision of treason, or the bare knowledge and concealment of treason in others, without any degree of assent thereto,¹⁹ thus accentuating the plain duty of everyone to expose treason and bring traitors to justice.

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THE LIABILITY OF A CARRIER FOR THE EJECTION OF A PASSENGER WHEN THE CARRIER FAILS TO FURNISH THE PROPER TICKET.—The common carrier of passengers is entitled to the compensation for the carriage of passengers before the completion of the journey, and, as the whole conduct of the business is built up on this right, it is necessary that it should be properly safeguarded. The almost universal method of enforcing this right is by ejecting from the train a passenger who refuses to pay the proper fare on the demand of the conductor. Accordingly, if the passenger wrongfully refuses to pay the proper fare, or is unable to pay it, the carrier may eject him from the train without incurring liability, thereby

¹³ Ex parte Bollman, *supra*; Case of Fries, *supra*.

¹⁴ U. S. v. Vigol, Fed. Cas. 16, 621.

¹⁵ Fed. Crim. Code, § 1, Rev. Stat. § 5331, U. S. Comp. Stat. '16, § 10165.

¹⁶ Fed. Crim. Code, § 2, Rev. Stat. § 5332, U. S. Comp. Stat. '16, § 10166.

¹⁷ U. S. v. Wiltberger, 4 Curtis (U. S.) 574, 5 Wheat. 76.

¹⁸ Carlisle v. U. S., 83 U. S. 147.

¹⁹ Fed. Crim. Code, § 3, Rev. Stat., § 5333, U. S. Comp. Stat. '16, § 10167.

terminating the relation of carrier and passenger.¹ But the contract of the passenger with the ticket agent creates the relation of carrier and passenger, out of which the duty arises on the part of the carrier to transport him to his destination. This duty arises by virtue of the fact that the common carrier is a servant of the public, holding out to carry any one who offers himself as a passenger and is willing to pay the fare.² Therefore the carrier is liable, once the relation of carrier and passenger has been created, for any wrongful ejection, as this constitutes a breach of duty.³

The business of common carriers of passengers is conducted by means of tickets, and the carrier has the right to make reasonable regulations in regard to them.⁴ A very common regulation is that the conductor is bound absolutely by the ticket, and that, unless the passenger has the proper ticket, it is the conductor's duty to eject him. The result of such a regulation is that the conductor is only performing his duty to the carrier, when he ejects a passenger who has the wrong ticket, even though the proper ticket was paid for—some other agent of the carrier having negligently given the passenger the wrong ticket.⁵

The authorities are conflicting as to the passenger's rights against the carrier in such a case. The cases confuse the principles involved, but three distinct views as to the nature of tickets seem to be the basis of the conflict.

One line of cases holds that the carrier is liable only for the breach of the contract to carry, allowing as damages the cost of the ticket only.⁶ This holding is based on the reasoning that the ticket is conclusive between the conductor and the passenger as to the latter's right to ride, since the business of the carrier could not be efficiently conducted under any other rule.⁷ Hence, the ejection is not tortious, as the conductor is performing his duty. The logical result of this holding is that the passenger is under the duty to pay the extra fare to avoid ejection,⁸ and he should

¹ *O'Brien v. Boston, etc., R. Co.*, 15 Gray (Mass.) 20, 77 Am. Dec. 347; *McKinley v. Louisville, etc., R. Co.*, 137 Ky. 845, 127 S. W. 483, 28 L. R. A. (N. S.) 611.

² *Pennington v. Philadelphia, etc., R. Co.*, 62 Md. 95.

³ *Head v. Georgia Pacific R. Co.*, 79 Ga. 358, 11 Am. St. Rep. 434; *Erie Railroad Co. v. Winter*, 143 U. S. 60.

⁴ *Virginia, etc., R. Co. v. Hill*, 105 Va. 729, 54 S. E. 872. See *Commonwealth v. Power*, 7 Metc. (Mass.), 596, 41 Am. Dec. 465.

⁵ On principle it would seem that it would make no difference whether the mistake was made by a ticket agent or by a conductor, but a few of the cases make a distinction in such a case.

⁶ *Western Maryland R. Co. v. Stocksedale*, 83 Md. 245, 34 Atl. 880; *Norton v. Consolidated R. Co.*, 79 Conn. 109, 63 Atl. 1087, 118 Am. St. Rep. 132, 6 Ann. Cas. 943; *Pennsylvania R. Co. v. Connell*, 112 Ill. 295, 54 Am. Rep. 238; *Van Dusan v. Grand Trunk R. Co.*, 97 Mich. 439, 56 N. W. 848; *Virginia, etc., R. Co. v. Hill*, *supra*.

⁷ *Harp v. Southern R. Co.*, 119 Ga. 929, 47 S. E. 206, 100 Am. St. Rep. 212; *Virginia, etc., R. Co. v. Hill*, *supra*.

⁸ *Poulin v. Canadian Pacific R. Co.* (C. C. A.), 52 Fed. 197; *Western Maryland R. Co. v. Stocksedale*, *supra*; *Pennsylvania R. Co. v. Connell*, *supra*.

not resist the ejection.⁹ This view seems unsound on principle and is contrary to the decided weight of authority.

The majority of the cases lay down the rule that, although the ticket is conclusive between the conductor and the passenger and the conductor's ejection of the passenger is not wrong, yet the negligence of the ticket agent, or other agent of the carrier, causes the breach of the duty to carry, and hence is tortious.¹⁰ The basis of this holding is that the carrier cannot avoid liability for the tort of the ticket agent by alleging that the ejection was not a tort; it will not be heard to say that it manages its business in such a way that it makes a contract through one of its agents that it may violate through another.¹¹ The passenger is, therefore, allowed to recover, in an action of tort, compensatory damages for the breach of the duty owing.¹² Compensatory damages in this connection include all actual damages resulting from the wrongful ejection; damages for the mental anguish and suffering caused thereby, and also damages for the humiliation and degradation of being ejected.¹³ The carrier is liable in punitive damages for any willful and malicious conduct on the part of the conductor.¹⁴ And though the conductor is not bound to listen to the passenger's explanation of the mistake, since the ticket is conclusive, yet his failure to do so raises a presumption that the ejection was malicious.¹⁵ Under this view the passenger is under no duty to pay the additional fare to avoid ejection,¹⁶ and he has the right to resist the ejection by any force short of creating a criminal breach of the peace.¹⁷ The right to resist is based on the reasoning, which seems eminently sound, that the passenger has a legal right to be on the train and is under no duty to pay the fare twice.

⁹ *Norton v. Consolidated R. Co.*, *supra*.

¹⁰ *Kansas City, etc., R. Co. v. Foster*, 134 Ala. 244, 32 South. 773, 92 Am. St. Rep. 25; *Krueger v. Chicago, etc., R. Co.*, 68 Minn. 445, 64 Am. St. Rep. 487; *Philadelphia, etc., R. Co. v. Rice*, 64 Md. 63, 21 Atl. 97; *Appleby v. St. Paul City R. Co.*, 54 Minn. 169, 40 Am. St. Rep. 308. See 4 ELLIOT, RAILROADS, § 1594 and DOBIE, BAIL. & CAR., § 195, where the soundness of this holding is clearly demonstrated.

¹¹ *Smith v. Southern R. Co.*, 88 S. C. 44, 70 S. E. 1057, 34 L. R. A. (N. S.) 708; *Head v. Georgia Pacific R. Co.*, *supra*.

¹² *Philadelphia, etc., R. Co. v. Rice*, *supra*; *Kansas City, etc., R. Co. v. Foster*, *supra*. And the passenger also has the right to sue for the breach of contract.

¹³ *Lake Erie, etc., R. Co. v. Fix*, 88 Ind. 381, 45 Am. Rep. 464; *Head v. Georgia Pacific R. Co.*, *supra*.

¹⁴ *Gorman v. Southern Pacific Co.*, 97 Cal. 1, 31 Pac. 1112, 33 Am. St. Rep. 157; *Chiles v. Southern R. Co.*, 69 S. C. 327, 48 S. E. 252.

¹⁵ *Illinois Cent. R. Co. v. Reid*, 93 Miss. 458, 46 South. 146, 17 L. R. A. (N. S.) 344.

¹⁶ *Murdock v. Boston & A. R. Co.*, 137 Mass. 293, 50 Am. Rep. 307; *Ellsworth v. Chicago, etc., R. Co.*, 95 Iowa 98, 63 N. W. 584, 29 L. R. A. 173. Nor is he required to pay the fare to mitigate damages. *Norman v. Eastern Carolina R. Co.*, 161 N. C. 330, 77 S. E. 345, 34 Am. Cas. 917; *Ellsworth v. Chicago, etc., R. Co.*, *supra*.

¹⁷ *Hufford v. Grand Rapids & I. R. Co.*, 64 Mich. 631, 8 Am. St. Rep. 859; *Erie Railroad Co. v. Winter*, *supra*; *Ellsworth v. Chicago, etc., R. Co.*, *supra*.

In some cases a distinction is made between tickets apparently good and tickets obviously bad. A few courts hold that when the ticket is, on its face, not good for the trip, the passenger cannot recover for the ejection.¹⁸ But the better view seems to be that the passenger has a right to rely on the statements of the ticket agent and upon the fact that it is the duty of the ticket agent to give him the proper ticket.¹⁹ This is upon the theory that the passenger is not supposed to be familiar with the regulations of the carrier, and consequently is not charged with notice of any defects. However, if the passenger knows of the defect, or is negligent,²⁰ as where he has lost his ticket, he cannot recover for the ejection.

The third view, which seems to have found favor in some of the recent cases, is that the ticket is not conclusive between the conductor and the passenger, since it is not the contract of carriage between the carrier and the passenger, but only a token or evidence of it, by which the conductor will know that the bearer is a person entitled to ride.²¹ The contract is made between the ticket agent and the passenger, and by it the right to be carried is created, regardless of whether or not the proper ticket evidencing the contract is given the passenger. Under this rule it becomes the duty of the conductor to heed the reasonable explanation of the passenger as to how the mistake arose, and if he does not, the ejection is at the carrier's peril.²² Hence, it would seem that the good faith of the conductor's action is immaterial, except in the awarding of punitive damages.

The present tendency of the cases is shown in the recent case of *Creech v. Atlantic Coast Line R. Co.* (N. C.), 93 S. E. 453. The plaintiff bought a ticket from Harrisonburg, Va., to Selma, N. C., via Staunton, Charlottesville, and Richmond. The conductor on the train between Staunton and Charlottesville told the plaintiff that the ticket was not good, and had it changed in Char-

¹⁸ *Western Maryland R. Co. v. Stocksedale*, *supra*.

¹⁹ *Indianapolis St. R. Co. v. Wilson*, 161 Ind. 153, 66 N. E. 950, 100 Am. St. Rep. 261; *Memphis St. R. Co. v. Graves*, 110 Tenn. 232, 75 S. W. 729, 100 Am. St. Rep. 803; *Hufford v. Grand Rapids & I. R. Co.*, *supra*. But it has been held that the ticket agent has authority only to sell tickets, and that the carrier is not liable for statements beyond the scope of the ticket agent's authority. *Shelton v. Erie Railroad Co.*, 73 N. J. L. 558, 9 Ann. Cas. 883.

²⁰ *Poulin v. Canadian Pacific R. Co.*, *supra*; *Harp v. Southern R. Co.*, *supra*; *McKinley v. Louisville, etc., R. Co.*, *supra*.

²¹ *Boyd v. Spencer*, 103 Ga. 828, 68 Am. St. Rep. 146; *Quinnby v. Vanderbilt*, 17 N. Y. 306, 72 Am. Dec. 469; *Indianapolis St. R. Co. v. Wilson*, *supra*; *Pennington v. Philadelphia, etc., R. Co.*, *supra*. A ticket is not such a written contract as that it cannot be varied by parol evidence. *Erie Railroad Co. v. Winter*, *supra*; *Quinnby v. Vanderbilt*, *supra*. But the ticket may be the contract of carriage, where the parties so intend, as in the case of excursion tickets and tourists' tickets. *Pennington v. Philadelphia, etc., R. Co.*, *supra*; *Mosher v. St. Louis, etc., R. Co.*, 127 U. S. 390.

²² *Hufford v. Grand Rapids & I. R. Co.*, *supra*; *Indianapolis St. R. Co. v. Wilson*, *supra*; *Smith v. Southern R. Co.*, *supra*.

lottesville. The ticket agent in Charlottesville by mistake wrote Thelma on the ticket instead of Selma. On boarding the Atlantic Coast Line train at Richmond, the plaintiff was told by the conductor that the ticket was not good. The plaintiff explained how the mistake occurred and offered to pay for a telegram to Harrisonburg to ascertain whether or not he had paid the proper fare. The plaintiff would have paid the fare from Richmond to Selma, but did not have sufficient money to do so. The conductor ejected him from the train neither paying attention to the explanation nor to the offer to pay for the telegram. It was held that the plaintiff was entitled to recover for the wrongful ejection.

These cases look rather to the hardship worked on the passenger by the rules of the carrier than to the inconvenience that the carrier will be put to. They recognize the fact that the conductor often uses his position arbitrarily to enforce indignities upon the passenger. But in the absence of such action on the part of the conductor, it seems that the result of the second and third views is practically identical, the only difference being in regard to the conductor's duty to heed the reasonable explanation of the passenger.

THE CONSTITUTIONALITY OF THE SELECTIVE DRAFT LAW.—In order to carry on the war, declared by the United States against Germany, an Act of Congress was passed on May 18th, 1917, requiring all persons between certain ages to register for military duty. Several cases have arisen since the passage of this Act, questioning its constitutionality. It has been attacked on the ground that, (1) Congress has no power to pass such an act, (2) it takes away the common law rights to remain within the realm, (3) it calls out the militia for foreign service, which is in contravention of the Constitution, (4) it is in contravention of the Thirteenth Amendment, prohibiting involuntary servitude, and (5) it constitutes class legislation.

The Constitution of the United States empowers Congress "To raise and support armies."¹ The means by which this is to be done are not specified. But it is provided that: "The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."² And it is also a well established rule of construction that the grant of a power carries with it by necessary implication all incidental powers necessary to put into effect the power granted. For to give Congress the power and not the means to carry this power into effect would be a contradiction in terms. However, it is contended that

¹ Art. I, sec. 8, clause 12.

² Art. I, sec. 8, clause 18.